

## **REMARKS**

The last Office Action of February 24, 2009 has been carefully considered. Reconsideration of the instant application in view of the foregoing amendments and the following remarks is respectfully requested.

Claims 16-30 are pending in the application. Claims 26-30 have been withdrawn from further consideration due to an earlier election/restriction requirement. Claims 16, 18-20 and withdrawn claims 26-28 have been amended. No claim has been canceled. Claim 31 has been added. Support for the subject matter of claim 31 can be found in paragraph [0028] of the instant specification. Amendments to the specification have been made.

## **CLARIFICATION AMENDMENT**

Applicant has amended the specification and the claims by replacing the term "shaping area" with --shaped region-- to better reflect the German word "Formgebungsbereich" and thus to indicate that this portion of the spray can has been shaped and not intended to be shaped at a later time. The changes are cosmetic in nature and do not relate to patentability to the wording of the claims.

## **SPECIFICATION**

In addition to the headings added by way of applicant's first preliminary amendment filed March 3, 2006, applicant has added a heading relating to "CROSS-REFERENCES TO RELATED APPLICATIONS".

## **CLAIM REJECTIONS - 35 U.S.C. §112, SECOND PARAGRAPH**

Claim 18 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter

which applicant regards as the invention.

Claim 18 sets forth that the circumference of the lower can portion is equal in size as a circumference of the shaped region. To explain the subject matter of claim 18, the following example is given: The ends of a longitudinal strip are connected into a ring. The thus-formed ring can be shaped into various forms, such as ellipse, oval, polygon etc. While the area enveloped by the ring is at a maximum, when the ring is circular, the cross sectional area will decrease as the shape deviates from the circular shape and may even approach zero when the ring is fully flattened. Still, the circumference of the ring or any other shape and the wall thickness of the strip remain the same. Thus, referring now to the spray can of the present invention, this means that even though the can body has an upper non-circular configuration can portion and the lower circular can portion, the dimension of their circumference remains the same, when producing the spray can.

It is applicant's contention that claim 18 is therefore clear on this point.

Withdrawal of the rejection under 35 U.S.C. §112, second paragraph is thus respectfully requested.

#### **CLAIM REJECTIONS - 35 U.S.C. §102(b)**

Claims 16-19, 21-24 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Pat. No. 3,759,205 to Dolveck.

Claims 16-18, 20-25 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Pat. No. 5,899,105 to Erhard.

The rejection under 35 U.S.C. 102(b) is respectfully traversed in view of the following remarks.

The present invention, set forth in claim 16, is directed to a spray can having a can body with a lower can portion and an upper can portion. The lower can portion has a generally cylindrical configuration so as to have a substantially circular cross section, whereas the upper can portion has a generally non-circular cross section.

The can body has hereby a substantially constant wall thickness about a circumference thereof and along a height thereof.

In rejecting original claim 16, the Examiner referred to Dolveck's Fig. 25 to support the Examiner's assertion that Dolveck also discloses a can body with an upper can portion of non-circular configuration. Applicant respectfully disagrees. While the process outlined in Dolveck allows the formation of a container of various shapes (see col. 1, ll. 42-47), common to all these shapes is the realization of a cross section that is circular throughout. The tools to make the various shapes are all cylindrical, regardless of the ultimate shape of the container, so that the container has also a cylindrical, i.e. circular configuration. Reference is made to col. 2, line 34 (*"The cylindrical tool 6"*), col. 4, ll. 28, 29 (*"The tool 28 has two cylindrical surfaces 29 and 20"*), col. 4, ll. 65-67 (*"tool 38 has two cylindrical surfaces 39 and 40 between which is a conical surface 41"*). Tool 38 is used to produce the container of Fig. 25 which is circular throughout with a conical portion. Dolveck expressly in various passages of the specification to the provision of a tubular blank that *"is always a cylindrical container"* (col. 3, ll. 62-63, col. 4, ll. 12, 13, col. 4, ll. 56, 57).

For the reasons set forth above, it is applicant's contention that Dolveck neither teaches nor suggests the features of the present invention, as recited in claim 16.

Claim 16 has also been rejected in view of Erhard, whereby the Examiner refers to Fig. 1 to support the disclosure of an upper can portion of non-circular cross section. Applicant respectfully disagrees. Like Dolveck, Erhard discloses a can that can be made of different shapes. For example, Fig. 1 shows a can having an expanded region in midsection which can be shaped rectilinear, whereas Fig. 2 shows an expanded region of bulging configuration. Regardless of its shape, the expanded region is circular in cross section. As described in col. 3, ll. 46-52, the expansion is implemented on the **whole of the height** of the region. In other words, there is no indication whatsoever of producing an expanded region which is non-circular. Rather, it can be assumed that the can has a circular configuration also in the expanded region, especially when considering that the basic blank has a

cylindrical configuration (see col. 4, ll. 6-8). Again, as noted in col. 4, ll. 14-16, the blank is expanded by an overall expansion on the whole of the height of the region to be expanded. In other words, the circular shape is retained.

The Examiner also advanced the notion that Erhard discloses in Fig. 1 a can body of substantially constant wall thickness about a circumference thereof and along a height thereof. Again, applicant respectfully disagrees. As a result of the drawing process described in Erhard, the wall thickness in the expanded region becomes thinner and may even tear (see col. 4, ll. 24, 25). Before being expanded, the can has a diameter of 0.145 mm (col. 4, line 34). After formation, the expanded region has a wall thickness of 0.135 mm (col. 4, line 41). Thus, the Examiner's assertion that the Erhard can has a constant wall thickness is clearly in error.

For the reasons set forth above, it is applicant's contention that Erhard neither teaches nor suggests the features of the present invention, as recited in claim 16.

Withdrawal of the rejection under 35 U.S.C. §102(b) is thus respectfully requested.

#### **CLAIM REJECTIONS - 35 U.S.C. §103(a)**

Claim 25 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Dolveck in view of U.S. Pat. No. 6,907,653 to Chupak.

Claim 18 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Erhard.

The rejection under 35 U.S.C. 103(a) is respectfully traversed in view of the following remarks.

Claims 18, 25 which depend from claim 16 and therefore contain all the limitations thereof, patentably distinguishes over the applied prior art in the same manner as claim 16.

It should, however, be noted that claim 18 is further considered allowable on their own merits as they recite other features of the invention neither taught nor suggested by the applied prior art. Claim 18 recites that the circumference of the

lower can portion is equal in size as a circumference of the shaped region. Clearly, this feature is not disclosed in Erhard, as the expanded region has a circumference which is much wider than the other regions of the container.

Withdrawal of the rejection under 35 U.S.C. §103(a) is thus respectfully requested.

## CITED REFERENCES

Applicant has also carefully scrutinized the further cited prior art and finds it without any relevance to the claims on file. It is thus felt that no specific discussion thereof is necessary.

## CONCLUSION

In view of the above presented remarks and amendments, it is respectfully submitted that all claims on file should be considered patentably differentiated over the art and should be allowed.

Reconsideration and allowance of the present application are respectfully requested.

Should the Examiner consider necessary or desirable any formal changes anywhere in the specification, claims and/or drawing, then it is respectfully requested that such changes be made by Examiner's Amendment, if the Examiner feels this would facilitate passage of the case to issuance. If the Examiner feels that it might be helpful in advancing this case by calling the undersigned, applicant would greatly appreciate such a telephone interview.

Respectfully submitted,

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